

chapter 12

Water Rates



Water Rates

Program Assistance

Utility Certification and Rate Design - For processing water and wastewater Certificates of Convenience and Necessity (CCN), water and wastewater rate applications, and review of construction plans for water systems, call Utility Certification and Rate Design at 512/239-6960.

State and Local Authority

State

Chapter 13 of the Texas Water Code (TWC) authorizes TNRCC to regulate four types of water and sewer utility service providers: Investor-Owned Water and Sewer Utilities (IOUs), Article 1434a Nonprofit Member-Owned and Member-Controlled Water Supply or Sewer Service Corporations, Water Districts, and Cities. The TNRCC has direct jurisdiction over the retail

Utility Jurisdiction Under Texas Water Code Chapter 13

Type of Entity	Certificate of Convenience and Necessity Required	TNRCC RATE JURISDICTION				Tariff and Service Policies Required	Emergency Interconnect Can Be Ordered
		Retail		Wholesale Appellate	Notice to Ratepayer Required		
		Original	Appellate				
Investor Owned Outside City Limits	Yes	Yes		Yes	Yes	Yes	Yes
Inside City	Yes		Yes	Yes	Yes	Yes, if the City does not require its own	Yes
Water Supply Corporation	Yes		Yes, with 10% protest	Yes	No	No, but must file tariff	Yes
District	No, unless serving in an area certified to another system		Yes, with 10% protest (In or Out)	Yes	Yes, (Out of District Ratepayers)	No	Yes
City	No, unless serving in an area certified to another system		Yes, (Out of city ratepayers) 10% protest	Yes	Yes, (Out of city ratepayers only)	No	Yes

water rate schedules for IOUs, and appellate jurisdiction over retail water rate schedules set by water supply corporations (WSCs), water districts, and ratepayers outside the city or district limits.

TNRCC also has appellate jurisdiction over wholesale water and wastewater rates under Chapters 11, 12, and 13 of the TWC. The table on page 12 - 1 provides information concerning the Commission's jurisdiction over each type of water and sewer utility service provider as defined in TWC Chapter 13.

Local

Municipalities regulate water and wastewater utilities operating within their corporate limits. A utility must obtain city approval before making a rate change, and may appeal city decisions to TNRCC.

Program Requirements

Certificates of Convenience and Necessity

Certificates of Convenience and Necessity (CCNs) delineate a water or sewer utility's service area. Separate CCNs are required for water service areas and sewer service areas. A utility holding a CCN is required to provide continuous and adequate service to anyone in the service area.

CCN Required

All IOUs and water supply or sewer service corporations are required to hold a CCN for their service area. A CCN is also required for any water district or city that is providing water or sewer service in an area already being lawfully served by another similar utility. An IOU or WSC may extend service to a contiguous territory up to one-quarter mile outside of its established service region without having to amend the CCN. A utility cannot extend into an area already being lawfully served by another utility, and must notify the Commission of the extension.

CCN Application Process

Commission approval is required to obtain, amend, cancel or transfer a CCN. To obtain, amend or cancel a CCN, an application must be submitted to the Commission. This application includes a completed application form, proposed notices for publication, a list of all neighboring utilities and affected parties, and maps which show the proposed service area.

Once the application is accepted for filing, the applicant is instructed to provide Notice of Application. This approved notice must be published once a week for two consecutive weeks in a local newspaper and copies must be mailed to neighboring utilities and affected parties. There is a 30-day comment period after all notices have been provided.

If no protests are received, TNRCC staff may process the application and the CCN may be issued 60 to 90 days after the application is filed. If a protest is received, or if TNRCC staff has concerns about the request, a hearing will be scheduled to consider the application.

Sale or Transfer of a CCN

To sell, transfer, merge or lease a utility system and transfer a CCN, the Commission must receive notice of the proposed sale of the utility's system at least 120 days before the effective date of the transaction. The Executive Director will consider whether a hearing is necessary based on the experience, compliance history and financial stability of the person or entity acquiring the system.

If the sale, transfer, merger or lease is approved, a letter is sent to the applicant with instructions to provide proof that the transaction has been completed. Once the transaction documentation is received, staff prepares a recommendation and proposed order to transfer the CCN.

If the Executive Director does not approve the transaction, a public hearing will be scheduled. An Administrative Law Judge (ALJ) from the State Office of Administrative Hearings (SOAH), schedules a preliminary hearing. At that hearing the ALJ takes jurisdiction of the case, names parties, accepts public comments and allows the parties a chance to negotiate. If no agreement can be reached, a discovery schedule and evidentiary hearing date is set (refer to Chapter 3 for more details). Based on the

evidence presented at the hearing, the Commission will issue or deny (completely or partially) the CCN and associated service areas requested.

Retail Rates and Rate Changes

IOUs Outside City Corporate Limits

An IOU must have its tariff (service rate schedule page, service rules, an extension policy and an emergency water rationing plan) approved by TNRCC, and must also obtain Commission approval before service rates can be changed. To obtain approval, an IOU must submit a completed application form and provide all retail ratepayers notice of the proposed rate change on a form approved by TNRCC. If the Agency receives written protests from more than ten percent of the utility's affected ratepayers or if Agency staff has concerns about the proposed change, a hearing is held. The Commission will then rule on the proposed rate change. If fewer than ten percent of the utility's affected ratepayers protest in writing to the Agency, the service rate change can be approved administratively.

IOUs Inside a City's Corporate Limits

An IOU located within a city's corporate limits must obtain the city's approval to change its service rates or rules. The IOU may appeal a city's rate decision to TNRCC.

WSCs, Water Districts or Cities

WSCs, water districts, and cities are not required to obtain TNRCC approval to change their rates. Cities and water districts must notify retail customers served outside their corporate limits of any rate changes. Retail ratepayers may seek rate relief by protesting to TNRCC, which retains appellate jurisdiction over these entities' rate schedules, with one exception. Ratepayers living within the corporate limits of a city cannot appeal their rate changes to the Commission; they must work directly with the city if they believe their rates are not reasonable or justified.

Retail Rate Appeals

To begin the retail rate appeals process, a petition signed by a minimum of ten percent of the affected ratepayers must be submitted to TNRCC within 90 days of the effective date of the rate change. Once this petition is submitted the rate case moves to the hearings stage (refer to Chapter 3).

A preliminary hearing is scheduled by SOAH. If an agreement cannot be reached, a discovery schedule and evidentiary hearing date is set. The Commission will then set a cost-based rate which allows the utility to recover its reasonable revenue requirements. For an IOU, reasonable revenue is based on a historic test year adjusted for known and measurable changes. For non-profit utilities, it is typically determined on a cash-flow basis.

Avoiding a Ratepayer Appeal

A water or sewer utility should conduct a cost-of-service rate study before considering a rate change. This will determine the revenue required for providing and sustaining utility service and what rates are necessary to generate that revenue.

Good public relations are very important - informed ratepayers can be an asset to a utility. The utility may find it advantageous to conduct regular public meetings or enclose newsletters with bills. These newsletters can provide information about cost-of-service rate studies, improvements to the system that will be beneficial to all ratepayers, or any other issues that might interest ratepayers. Ratepayers who feel involved with their utility are more likely to be allies. It is also important to remember that gradual changes are more readily accepted than large increases. TNRCC staff are available to assist with the development and publication of these newsletters. For more information contact Utility Certification and Rate Design Staff at 512/239-6960.

Wholesale Rate Appeals

Wholesale raw or treated surface water rates may be appealed to TNRCC under TWC Chapters 11.041 and 12.013. A rate change is not required to initiate an appeal under these sections, and an appeal may be submitted at any time by either the purchaser or supplier.

Wholesale potable water or wastewater service rates may also be appealed to TNRCC under TWC Chapter 13.043. A purchaser of water or sewer service has 90 days to file an appeal once notice of a rate change has been served by the service provider.

Wholesale Rate Appeal Process

Wholesale rate cases generally arise from contractual disputes between the wholesale provider and purchaser(s). The wholesale rate appeals process begins with a written petition submitted to TNRCC and accompanied by a \$100 filing fee. Petitions filed under TWC Chapters 11.041 and 12.013 also require a deposit of \$25.00. The money generated from this fee is deposited in the State General Revenue Fund.

The petitioner must also serve a copy of the petition to the party from whom they are seeking relief. The petition must clearly state under which sections of the TWC the appeal is being made, include specific factual allegations, and specify what relief is sought by the petitioner. The petitioner must also submit copies of any applicable contracts.

Once the petition has been accepted by TNRCC, a hearing is scheduled. At the preliminary hearing the ALJ from the State Office of Administrative Hearings establishes jurisdiction and determines whether the protested rate adversely affects public interest. This determination is based on factors other than cost of service.

If the protested rate is not found to adversely affect public interest, the case is dismissed. If the protested rate is found to be adverse to the public interest, the parties may attempt to negotiate. If negotiations are not successful, a discovery schedule and evidentiary hearing date will be set. Based on the evidence from the evidentiary hearing, the Commission will calculate an annual cost of service in accordance with applicable TWC provisions and any reasonable methodologies set by contract, and set a cost-based wholesale rate.

Fees

Regulatory Assessment Fees are levied on IOUs, WSCs, and water districts under 30 TAC Chapter 291.71 - 291.76 to support Water Utility

technical assistance and regulatory programs. IOUs are required to collect a fee of one percent of a customer's retail water or wastewater bill. WSCs and water districts must assess a fee of one-half of one percent on all retail customers' water or wastewater bills. Fees may be submitted to TNRCC on an annual or quarterly basis. Utilities that make payments on a quarterly basis receive a credit of 10 percent of the total fee for administrative costs.

In Addition

Frequently Asked Questions

Is ratepayer notice of a water or sewer retail rate change required?

An IOU must provide notice of a rate change to its ratepayers on a form approved by the Commission. A city or water district must provide notice of a rate change to all out-of-city or out-of-district ratepayers. There is no requirement for ratepayer notice of a rate change for water supply or sewer service corporations or for in-district and in-city ratepayers, although notifying ratepayers of a rate change is always good for public relations.

Does a WSC, water district or city have to have a cost-of-service rate study completed to change its water or sewer rates?

Although it is advisable for any water or sewer utility to complete a cost-of-service rate study, it is not required.

How long does a rate appeal case last?

Unless an agreement is reached and the appeal withdrawn, the case will go through a hearings process that can last from six to 12 months. The discovery schedules and hearing dates are generally determined by consensus of the parties.

Does a city have jurisdiction over water or sewer IOUs within its corporate limits?

A city has jurisdiction over the service rates and rules of an IOU located within the city limits. The city must maintain a tariff approving the

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IOU's service rates and rules and approve any changes to the rates or rules. Should the IOU disagree with a city's decision, it may appeal to TNRCC. Unless the city has adopted specific utility rules for IOUs the Agency's Rules apply. The city can delegate its jurisdiction over IOUs to TNRCC by city ordinance.

Must a CCN holder provide service to everyone in its service area?

Yes. A CCN holder must provide service when the applicant for service signs a service agreement and pays any required connections fees. An IOU's connection fee is approved by the Commission and is indicated on the utility tariff's rate schedule page. Utilities may require developers or service applicants that place unique, non-standard service demands upon the system to contribute to any special construction required to provide service. Applicants for service to a CCN holder may complain to TNRCC if they believe the connection fee charges are unreasonable.

Does a utility have to return customer deposits?

Most utilities are required to refund deposits to current or previous customers, either under their own locally-adopted rules or under the rules of the TNRCC.

Under TNRCC Rules, IOUs are required to refund deposits, plus interest, promptly after the utility service has been discontinued, or after a customer has paid their bills on time for eighteen consecutive months [30 TAC Chapter 291.84(g)]. Residential applicants 65 years of age or older cannot be required to pay a deposit unless they have an outstanding account

balance accrued within the preceding two years with the utility or another water or sewer utility [30 TAC Chapter 291.84(b)].

Every year, the Public Utility Commission (PUC) sets the interest rate to be paid by IOUs for that year. The interest is payable annually if requested by the customer. If interest is not paid annually, the total interest earned is due at the time the deposit is refunded. The interest may be paid in cash or credited to the customer's account. The interest earned is calculated for each year the deposit was held, at the rate set by the PUC for that year.

Utility districts, water supply and sewer service corporations, and cities are not required to refund deposits under TNRCC Rules. However, these entities have usually adopted their own policies regarding the refund of deposits (if collected). Since these policies are locally adopted, they are enforceable by the board of directors or city council, but not by the TNRCC. These types of utilities also have the discretion not to refund deposits until service is discontinued, in accordance with their own rules. Water supply corporations may want to explain to customers the difference between service deposits and membership fees.

Does TNRCC have requirements for metering water service?

Generally, each community public water system must meter water service at each service connection. A service connection is defined as a single residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. (30 TAC Chapter 290.38)